Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Garcia	Analyst:	Jane Tolman	Bill Number:	AB 1523
Related Bills:	See Legislative History	Telephone:	845-6111	Introduced Date:	02-21-2003
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Long-Term Care or Long-Term Care Insurance Credit

SUMMARY

This bill would allow a credit to taxpayers that paid for long-term care or long-term care insurance for any family member.

PURPOSE OF THE BILL

It is the author's intent to help those individuals who incur the expense of long-term care or pay for long-term care insurance.

EFFECTIVE/OPERATIVE DATE

This bill is a tax levy and would be effective immediately upon enactment. It would be operative for taxable years beginning on or after January 1, 2003.

POSITION

Pending.

Summary of Suggested Amendments

The attached proposed amendments would remove the bill's definition of long-term care and would replace it with reference to the federal definition.

ANALYSIS

FEDERAL/STATE LAW

Under federal law, qualified long-term care insurance means any insurance that provides protection for long-term care services. Qualified long-term care services means services necessary to diagnose, prevent, cure, treat, mitigate, rehabilitate, and maintain or provide personal services to a chronically ill individual. A chronically ill individual is generally defined as an individual certified annually by a licensed health care practitioner as being unable to perform (without substantial assistance) at least two of the following activities of daily living (ADLs): eating, toileting, transferring, bathing, dressing, and continence. A chronically ill individual also includes someone who requires substantial supervision to be protected from health and safety concerns due to severe cognitive impairment.

Board Position:			Department Director	Date
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Current federal law specifically allows a deduction for medical expenses for the unreimbursed expenses for qualified long-term care services provided to the taxpayer, the taxpayer's spouse, or the taxpayer's dependents. This deduction is only allowed to the extent that it exceeds 7.5% of the taxpayer's adjusted gross income.

Long-term care insurance premiums are deductible on a graduated scale based on the individual's age before the close of the taxable year.

Age of Individual	Maximum Deduction
40 or less	$200
More than 40 but less than 50	375
More than 50 but less than 60	750
More than 60 but less than 70	2,000
More than 70	2,500

Current California law conforms to these federal tax provisions related to long-term care.

California law also allows a tax credit to eligible caregivers. The credit is $500 for each qualifying individual who has been certified to need long-term care. A qualifying individual may be the taxpayer, spouse of the taxpayer, or a qualifying dependent, as defined. The credit is not allowed to married couples filing jointly with an adjusted gross income of $100,000 or more, or to other individuals with adjusted gross income of $50,000 or more. This credit is allowed for taxable years beginning on or after January 1, 2000, and before January 1, 2005.

THIS BILL

This bill would allow a tax credit equal to the amount paid or incurred by the taxpayer during the taxable year for the cost of long-term care or long-term care insurance for any family member of the taxpayer. The credit shall not exceed $1,000 per family member.

This bill would define "family member" by reference to the federal law to include any of the following individuals who receive more than half of his or her support for the year from the taxpayer:

- a son or daughter of the taxpayer, or a descendant of either;
- a stepson or stepdaughter of the taxpayer;
- a brother, sister, stepbrother, or stepsister of the taxpayer;
- the father or mother of the taxpayer or an ancestor of either;
- a stepfather or stepmother, of the taxpayer;
- a son or daughter or a brother or sister of the taxpayer;
- a brother or sister of the father or mother of the taxpayer;
- a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer; or
- an individual whose principal place of abode, is the taxpayer's home and who is a member of the taxpayer's household.

"Long term care" is defined by reference to the Welfare and Institutions Code as a coordination continuum of preventive, diagnostic, therapeutic, rehabilitative, supportive, and maintenance service that address the health, social, and personal needs of individuals who have restricted self-care capabilities. Services shall be designed to recognize the positive capabilities of the individual and maximize the potential for the optimum level of physical, social, and mental well being in the least restrictive environment. Emphasis shall be placed on seeking services alternatives to institutionalization. Services may be provided by formal or informal support systems, and may be continuous or intermittent. "Long-term care" may include licensed nursing facility, adult residential care, residential facility for the elderly, private duty nursing, or home and community-based services.

This bill would require a long-term care facility or home care giver to provide the taxpayer with written verification, including the name of the taxpayer, the amount of payments made by the taxpayer for long-term care, the name of the individual receiving the care, and the time period covered.

Any credit that exceeds the taxpayer's tax liability may be carried forward until exhausted.

IMPLEMENTATION CONSIDERATIONS

This bill would raise the following implementation considerations. Department staff is available to assist the author with any necessary amendments.

This bill credit carryover period would be indefinite. As a result, the department would be required to retain the carryover on the tax forms indefinitely. Recent credits have been enacted with a carryover period limitation since experience shows credits are typically used within eight years of being earned.

This bill would require the long-term care facility or home care giver to provide the taxpayer with written verification. Language of this type in tax law normally specifies that the taxpayer would be required to provide the verification to the department upon request. It is suggested that this requirement be added to the bill.

The bill defines the term "long-term care" by reference to the Welfare and Institutions Code; in contrast, the Revenue and Taxation Code is in conformity with the Internal Revenue Code (IRC) definition of long-term care. From a tax law perspective, it may be less confusing for taxpayers and tax preparers to use the tax law definition. Please refer to the attached proposed amendment for specific language.

LEGISLATIVE HISTORY

AB 511 (Alquist, Ch. 107, Stats. 2000) created the tax credit for eligible caregivers discussed above under state law.

AB 2871 (Correa, Ch. 105, Stats. 2000) created the tax credit for eligible caregivers discussed above under state law. This act was chaptered out by AB 511 (Ch. 107, Stats. 2000)

AB 2617 (Liu, 2001/2002) would have made changes to state tax law allowing long-term care insurance to be excluded from income as part of a cafeteria plan. This bill failed to pass the Assembly Revenue and Taxation Committee.

SB 121 (Margett, 2003/2004) would allow a credit for amount paid or incurred for long-term care insurance or long-term care expense.

OTHER STATES' INFORMATION

Minnesota provides a credit of 25 percent of the insurance premium up to $100 for the taxable year or $200 if filing jointly. *New York* provides a credit equal to 10 percent of the premium paid for long-term care insurance during the taxable year. . *Illinois, Massachusetts*, and *Michigan* do not provide a credit comparable to the credit that would be allowed by this bill.

The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

Due to data limitations, it is only possible to provide generalized estimates for each category of long-term care. However, significant revenue losses would result, possibly on the order of $115 million annually beginning in 2003-04.

Revenue Discussion

The revenue impact of this bill would be determined by amounts incurred by taxpayers for long-term care or long-term care insurance for any family member who is deficient in two out of six activities of daily living, and the amount of credits that could be applied to reduce tax liabilities. In the initial tax year for the proposed credit (2003), nearly 120,000 individuals could potentially benefit from the credit.

According to the Department of Aging, there are about 100,000 individuals in long-term care facilities in California. Medicare or private insurance covers approximately one-third of these individuals; Medi-Cal covers the others. If one-half of those covered by Medicare or private insurance are taxpayers and have a tax liability with which to apply the maximum credit of $1,000, revenue losses would be on the order of $15 million. Those individuals receiving care in assisted-living facilities, adult day health care facilities, or in the home could easily exceed 100,000. The revenue loss impact for the latter categories could approach $100 million (100,000 x $1,000).

Although it depends on the area within the state, the cost of care in a long-term care facility is about $145 per day; in an assisted-living facility, about $75 per day; and in the home, in the $15 to $20 per hour range.

POLICY CONCERNS

Expenditures for insurance or for care services that are eligible for this credit would not be limited to California residents. Thus an individual in any state or country who has a California income tax liability could claim the credit. However, it would be unconstitutional to restrict this credit to California residents. Since insurance is sold internationally, there may not be an effective way to limit the credit for the insurance part of the bill. The bill could be amended to require that expenditures for care services be limited to those services administered in California.

This bill would allow taxpayers in certain circumstances to claim this new credit, as well as the existing eligible caregiver credit and the deduction for medical expenses. Taxpayers are generally not allowed multiple tax benefits for the same item of cost or expense.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 1523
As Introduced February 21, 2003

AMENDMENT 1

On page 2, strikeout lines 7 and 8 inclusive and insert:

<u>(2) "Long-term care" means 'qualified long-term care services' as defined in Section 7702B(c) of the Internal Revenue Code.</u>